

NR 445 Technical Advisory Group Meeting 13
December 3, 2001 notes
Wisconsin Dept. Natural Resources
101 S. Webster Street, Madison, WI

TAG Attendance: Hank Handzel, Printing Industries of WI & WI Paper Council; Howard Hofmeister, Bemis Company; Brian Mitchell, WI Cast Metals Assoc.; Tom Ravn, Serigraph, Inc.; Annabeth Reitter, Stora Enso; Rudy Salcedo, Milwaukee Health Department; Rob Sherman, Kraft Foods; Jeff Schoepke, WMC; Sharon Schwab, League of Women Voters of the Wisconsin Rapids Area; Pat Stevens, WI Transportation Builders Association; Mark Steinberg, SC Johnson; Caryl Terrell, Sierra Club; Mark Werner, WI Bureau of Public Health; Ed Wilusz, WI Paper Council; Jen Wisniewski, Briggs and Stratton; Caroline Garber, WDNR; Patrick Kirsop, WDNR; Jeff Myers, WDNR; Andrew Stewart, WDNR

Committee Attendance: Renee Lesjak-Bashel, Commerce; Marc Bentley, Bentley Government Affairs; Tom Coogan, Commerce; Tony Driessen, Quarles & Brady; Bernie Evans, ERM; Robert Fassbender, HFO Associates; Luis Fernandez, UW-Madison Safety Dept.; Jim Fleischmann, Liesch Environ. Services; Myron Hafele, Kohler Co.; John Heinen, Richland Center Foundry; Patricia Kandziora, UW-System Admin.; Lynn Knudtson, Future Foam; Susan Lindem, WDNR; Jerry Rodenberg, WDNR; Lauren Trick, EarthTech; Erin White, USEPA Region 5; Paul White, WEPCO; Michelle Wittmeyer, Kohler Co.; Jeff Zeman, Kohler Co

I. Welcome/Introductions/Review of Meeting Notes/Agenda Review

- **Welcome** – Caroline Garber welcomed TAG and Toxics Committee members.
- **Review of Meeting Notes** – No changes were made to the October 4th TAG minutes
- **Review of Meeting Agenda**
C. Garber reviewed the agenda and asked for comments. No suggestions for additional items for the agenda were brought forward.

II. Report on Air Spills

- **Robin Schmidt**, DNR Spill Team Leader, reported on the status of the NR 445/NR 706 Advisory Group and presented DNR's proposal to not revise the air spill language in NR 445 or NR 706 at this time. She added that the department recognizes the need for additional outreach on spill notification requirements as they relate to air releases and that the Spill Program and the Air Program plan to develop and deliver a more extensive outreach effort. A memo from Jay Hochmuth was handed out explaining the DNR's decision.
- *Question* - J. Schoepke wanted to know how this proposal differs from an earlier DNR proposal that used 10% of the NR 445 threshold for spill reporting
- *Answer* – J. Myers stated that the DNR had proposed to use 10% of a threshold for carcinogens and RfCs and to use the NR 445 thresholds for 1 hour and 24 hour (acute toxics) for other HAPs. The purpose of this was to indicate when a spill could be significant enough to be of concern and therefore should be reported.
- *Comment* – B. Fassbender stated that the Department was trying to define a hazardous substance as a release of a chemical in an amount greater than the NR 445 thresholds, but the statute (S. 292) and NR 706 (spills regulation) define a hazardous substance as one where the combination of quantity, duration, and toxicity of the HAP are what make it a hazardous substance. In his opinion, one first had to determine whether the release could cause harm. If the release was of an amount greater than a NR 445 threshold and it caused no harm, a company should not be required to report it.
- *Answer* – R. Schmidt answered that B. Fassbender was correct in that a release must first be determined to be hazardous according to the statutes.
- *Question* – H. Handzel asked a clarifying question. Was his understanding correct that if there is a federal RQ, that one should report a release above this amount. In addition, if there is no RQ or if the release is less than a reportable quantity, then one asks whether the discharge threatens or potentially

- threatens public health, safety, welfare, or the environment (air, lands or water). If there is a threat or potential threat, then notification is required.
- *Answer* – R. Schmidt stated that that this was a correct statement.
 - *Comment* – J. Heinen suggested that a flow chart of the decision process would help people better understand their need to report spills.
 - *Discussion* – Several people commented about the legal requirements and who makes the determination of whether one has a discharge of a hazardous substance. Does the facility or the Department make the call in terms of what is a hazardous substance?
 - *Answer* - The obligation to report a hazardous substance discharge is left to the facility. In order to meet that obligation, the facility therefore must make the determination of whether they have a hazardous substance that has been discharged. The determination is left to the facility. Robin noted that in general, if the discharge is severe enough where one has to question whether it should be reported, it probably should be, and suggested there is a greater risk from not reporting a discharge that needed to be reported than reporting a discharge that didn't need to be reported.
 - *Comment* – C. Garber stated that this discussion was helpful. The Department is not proposing to change any language in either NR 445 or NR 706 at this time. The Department will be developing spill informational materials for facilities in the future with answers to questions such as those raised by TAG members.

III. DNR/Foundry Industry Environmental Management System (EMS) Project

- Patrick Kirsop, DNR Small Business Section Chief and Air Management Lead on EMS Project and Brian Mitchell, Executive Director, Wisconsin Cast Metals Association presented proposed “placeholder” language for NR 445, that would allow the Department to consider allowing an EMS to be used by the foundry industry as part of a compliance demonstration for the technology requirements in NR 445 for carcinogens. The technology requirements are either Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER). This language would not replace any existing NR 445 requirements, but allow a source to voluntarily pursue this alternative compliance option, with approval from the Department. The proposal is limited only to foundries at this time and is for both new and existing foundries. It is part of the pilot DNR/Foundry Industry EMS project.
- *Question* - C. Terrell was unclear on the meaning of a couple of terms and the process that would be used in the proposed language:
 - Where it says the Department reviews the EMS documents on a case-by-case basis, is the Department's review reviewable by the public? If not, it should be.
 - Which of the terms in the proposed language tells me that there will be a measurable outcome associated with any goals?
 - The term EMS is not clear. The definition is different than other existing terms in statutes and as used in the Green Tier program. Does it limit its approach to ISO 14001, or does it allow other approaches that are equally as valid?
- *Response* – C. Garber said that staff would examine existing language statutes, in the Cooperative Environmental Agreement, Green Tier and other programs, for consistency.
- *Question* – C. Terrell asked what was meant by certification – independent audits by certified third party auditors, or self-audits?
- *Response* - B. Mitchell said that the Department can choose who conducts the certification and how the EMS is certified.
- *Question* – E. Wilusz asked whether the Department approves the EMS?
- *Response* – P. Kirsop replied that the Department will approve the EMS provisions as it relates to HAP compliance.
- *Question* – E. Wilusz asked how would a source benefit from this approach.
- *Response* – B. Mitchell said that a source would have more flexibility in using various ways to comply with BACT. C. Garber added that this may be a desirable option for companies which have already developed and adopted EMS as part of their overall business management. It is unlikely that a company would choose to develop an EMS solely to comply with NR 445, and that that is not the intent of offering the EMS option as an alternative means to comply with NR 445.
- *Question* – E. Wilusz inquired if a source has to meet BACT or LAER either way and if timelines or other compliance demonstrations would be different.

- *Answer* – B. Mitchell and C. Garber said that part of the EMS would be considered as equivalent to BACT, but by incorporating continual improvements and further HAP reductions, a source could go beyond the basic requirements of BACT. Possibly sources could get flexibility in terms of how they test their emissions or reporting requirements if the EMS contained acceptable alternative monitoring, measuring and reporting procedures.
- *Comment* – M. Hafele said that he was concerned about 3rd party certification costs (several thousand dollars per year).
- *Answer* – B. Mitchell said that third party certification is not necessarily required by this language. It could be self-certification.
- *Response* – C. Terrell said she would like it more definite than that, and proposed third party certification every third year, which is what she and others recommended and agreed upon in the Green Tier Legislation.
- *Comment* – T. Ravn said he was concerned about the “paper chase” and the cost associated with certification.
- *Comment* – R. Sherman felt independent certification was not needed. Certification by the Department should be enough.
- *Comment* – C. Terrell stated that when the Department decides the criteria someone will have to make the determination that the EMS is adequate and self-certification forever is not acceptable.
- *Response* – P. Kirsop stated that the Department is working out its role and was investigating to what extent that DNR staff would need to be ISO or EMS trained (lead auditor for example) and the extent that the Department was going to review the EMS plans.
- *Question* – Someone else asked about whether each HAP that needed BACT or LAER would have to be specifically addressed in the EMS.
- *Answer* – P. Kirsop and A. Stewart stated that a showing of equivalency to BACT is needed, so a portion of the EMS must be HAP specific.
- *Question* – B. Fassbender asked if this EMS approach would be expanded to other industry sectors.
- *Answer* – P. Kirsop said that depending how this pilot program works, there may be future expansion to other sectors. First, however, the Department needs to set up the EMS compliance demonstration for the foundry industry in NR 445, evaluate progress, and develop in-house expertise for now.
- *Comment* – P. Stevens suggested that the rule provide that the EMS option could be expanded to others at the Secretary’s discretion. This would allow the rule to be more flexible in the future to include other industry categories without having to revise the rule.

IV. Incidental Emitters

- *Caroline Garber, DNR Environmental Studies Section Chief* presented a Powerpoint slideshow (see handout titled “Incidental Emitters Proposal”) with a more fully developed proposal for screening incidental emitters out of the NR 445 regulatory process. Incidental emitters are companies that do not emit HAPs or only emit a small amount of HAPs that are unlikely to exceed the NR 445 threshold levels. Sources in certain SIC codes (a draft list was provided for consideration) were thought not to have emissions of HAPs and are assumed to be in compliance. In addition, sources not excluded from the SIC code list but that emit less than 1 ton of VOC or PM, are unlikely to emit HAPs at levels that would pose significant environmental problems and are assumed to be in compliance. However, certain types of processes (e.g., incinerators and chromium electroplaters), certain chemicals (a list of 27 was provided for consideration), and certain locations (e.g., near sensitive individuals - very young or old, immunosuppressed, people with preexisting respiratory diseases, etc.) are considered to be problematic so sources with a process, chemical or location of concern would have to conduct further evaluations of their emissions to ensure they do not emit HAPs above the NR 445 threshold amount. A flow chart of the steps involved with this proposal is included in the handout. The proposed rule would also include language to clearly allow the DNR to require an “incidental emitter” to comply with NR 445 if it was later found that the source’s emissions exceeded the standards.
- *Question* - S. Schwab asked if the list of chemicals had to be 20 or more and what was the reason for choosing 20?
- *Answer* – J. Myers responded that 20 was just a suggestion and the intent was to have a small, manageable list of chemicals for sources to look for, if they are a small emitter of concern.

- *Question* - C. Terrell asked if the first two screenings (for the SIC code and emitters of less than 1 ton of VOC and PM) were exclusionary, while the third “screen” brought sources “back in”. If so, the word “screen” for this concept did not seem appropriate. She would like to see this reflected better in the flow chart in some way.
- *Question* – A. Reitter asked whether the 1 ton of VOC or PM was actual or potential emissions.
- *Answer* – A. Stewart said that actual emissions are what is intended for this provision
- *Comment* – H. Handzel commented that in the SIC screen, the term power generation was not clear. For example, did it only cover diesel fuels or any other fuels and did it cover sources besides internal combustion engines?
- *Question* – S. Schwab asked whether this proposal would cover aerial pesticide spraying
- *Answer* – No, application of pesticides is not covered by NR 445. Pesticide applications are covered by DATCP regulations.
- *Comment* – R. Salcedo stated that location of the emissions is also a concern. Zoning issues are a problem when they allow an emission source very close to a residence. Sometimes, historical uses of land in large cities causes this, but not always. In his mind, it is the exposure that is the issue.
- *Question* – L. Knudtson asked if there was a way the DNR could place language in the rule that requires a buffer zone around industrial parks, to prevent this from happening.
- *Discussion* – There was a lot of discussion about this issue. In general, most present did not think it was possible or desired for the Department to interject itself into local zoning issues and NR 445 was not the best place to deal with this issue. C. Garber said that staff would try to develop a more detailed proposal for what is meant by locations of concern. One idea was to consider how far away an emission source is from a property line or residence.
- *Question* – C. Terrell asked if a facility is using the screening process to get out of NR 445, but its already near a daycare or other sensitive populations, how would the screening process work?
- *Answer* – A. Stewart said that for facilities that already have permits, this screening will clarify the requirements for NR 445. For a new source, the screening shows a source how to determine whether they need to meet NR 445.
- *Comment* – C. Terrell commented that she is aware of the fact that a new source in a residential area in Racine was recently permitted. It was unfortunate that their comments that a daycare was nearby did not have an impact on the issuance of the permit for that facility.
- *Answer* – C. Garber reminded everyone that this screening does not change the regulations or standards for a facility, it just defines how much work a source must do, in order to evaluate their emissions. What we are doing here is defining what a “reasonable search and inquiry” is.
- *Comment* – M. Werner suggested that another screening criteria should be whether there are numerous similar sources emitting the same HAPs in the same area.

V. Business Impact Working Group

- Caroline Garber, DNR Environmental Studies Section Chief , talked about some of the efforts being conducted to study the impacts of the NR 445 revisions on Wisconsin facilities.
- Jeffrey Schoepke, Director, Environmental Policy, Wisconsin Manufacturers and Commerce discussed two workshops that were held in November (7 companies on Nov. 1 in Appleton and about 20 companies on Nov. 29 in Milwaukee). WMC had the assistance of Andrew Stewart, DNR, Dave Liebl, UW SHWEC, and Renee Lesjak-Bashel and Tom Coogan, from Commerce (the Small Business Clean Air Assistance Program- SBCAAP). The status of the impact workshops are as follows:
 - ▶ The data is being evaluated and hopefully, will be presented at the next TAG
 - ▶ The first part of the workshops included background about the rule and the proposed revisions.
 - ▶ The second part of the workshops walked sources through the tasks that are associated with determining HAP emissions, reviewing options, and estimating what future compliance options would be used by a source. The estimates of costs were done for: a) the current NR 445 requirements; b) the proposed NR 445 (without the proposed process changes meant to ease regulatory burdens on sources); c) the proposed NR 445 (with regulatory improvements, as currently proposed).

- ▶ One goal of the project is to determine costs of the rule revisions. Another goal is to find “pressure points” in the rule that cause higher compliance costs with little or no environmental benefits. If “pressure points” are found, ways of reducing costs can be investigated.
 - ▶ The “up front” costs of investigating and quantifying emissions have been identified as a significant cost. There are also costs associated with compliance with NR 445, but these costs are harder to quantify – they vary from source to source and sector to sector. Each source must make an individual determination of which compliance option makes best sense for them. In addition, two similar sources may make different choices based on their specific and site-specific situation, thus cost estimates are somewhat uncertain.
 - ▶ WMC hopes to draw conclusions from this data and extrapolate to larger segments of WI industries. The individual companies will be anonymous in their report, but each participant will be identified by a code number.
- *Question* - C. Terrell asked whether the workshop had a balance of industries participating that are representative of Wisconsin industries.
- Renee Lesjak-Bashel, Clean Air Specialist, Small Business Clean Air Assistance Program, Dept. of Commerce gave an update on interviews that she is conducting with some companies to find out what types of tasks that sources may have to undertake to comply with the NR 445 revisions. Her approach parallels the workshops conducted by WMC, but is from one-on-one interviews with companies (companies also remain anonymous) that represent typical Wisconsin businesses and the questions are slightly different. Four companies have completed interviews, several more are “in the works” with about 5 to 10 more interviews planned. Some of the companies that are to be interviewed are in the following sectors: wood products, printing, metal fabricators, painting and coating, autobody repair, foundries, biotechnology, and electronics. Anyone can request a copy of the questions that are used in these interviews.

VI. NR 445 Rule Development Schedule

- Caroline Garber, DNR Environmental Studies Section Chief, presented a tentative schedule for drafting the NR 445 rule revision package:
 - ▶ December 17 (later changed to December 21) - receive comments from stakeholders and DNR staff on NR 445 language draft #3 (see draft # 3 item on agenda below for more information)
 - ▶ January 7th 2002 - TAG meeting 14 and Draft #4 of language send to stakeholders, DNR air managers, and DNR legal staff
 - ▶ February 11th, 2002 - Draft #5 and rest of green sheet package ready for internal review
 - ▶ February 25th, 2002 - Green Sheet package to Natural Resources Board
 - ▶ March 26th, 2002 – Natural Resources Board Meeting: Request for Public Hearing

No comments or questions were brought up at this time

VII. Draft #3 of the Proposed NR 445 Rule Revision Package

Andrew Stewart, DNR Air Management Engineer, presented Draft 3 of the proposed NR 445 rule revision package. The presentation included an overview of the proposed NR 445 rule to familiarize TAG members with the proposed re-structuring of the rule. Andrew Stewart went through the Draft #3 language in its entirety, to explain the changes to the workgroup and to have them ask questions.

- *Question* - P. Stevens asked about language for the MTE (maximum theoretical emission rate) and how this is applied in situations where there are multiple coatings used in a process line. Current policy is to assume that the highest % HAP coating is used in each case. He wanted to know if this change just reflects current policy.
- *Answer* – A. Stewart said that this is current policy and the change is just to make the language reflect what is actually done in practice.
- *Request for Feedback* – A. Stewart and C. Garber said that they would like to hear from stakeholders on whether to put a note in the applicability section that points affected sources to the section on

- reasonable search and inquiry, so that they can see if the screens can apply to them rather than going through the entire rule.
- *Question* – B. Fassbender had a question about the definition of internal combustion engine. Does the definition define the type of engine and the fuel adequately?
 - *Answer* – A. Stewart said that the definition will be reviewed to make sure it is better defined.
 - *Question* – B. Fassbender asked about the definition of fuel oil and what one should do if several types of on road diesel fuel were available. How should one specify it?
 - *Answer* – A. Stewart stated that the intent was to specify whatever fuel or fuels were approved for on road use. Staff will have to examine the issue of “boutique” diesel fuels, to see if this is an issue or not.
 - *Discussion* – Several questions about the current diesel exemption were asked and whether the exemption for using less than 40,000 gallons for stationary sources was on a per engine or per site basis.
 - *Answer* – A. Stewart explained the basis for the current NR 445 diesel internal combustion engine proposal and stated that since the health effects are the result of exposures at fixed locations, the exemption is intended to apply on a per site basis (not on a per engine basis). He requested comments on the diesel language from the TAG and Toxics Committee members for the next meeting (January 7, 2002).
 - *Question* – P. White asked whether external combustion boilers that burn diesel fuel are exempt (due to the existing virgin 1 fossil fuel exemption).
 - *Answer* – A. Stewart stated that they are exempt. Any language that might be misinterpreted will be cleared up.
 - *Question* – Are there any exemptions from NR 438 (emissions inventory reporting) for fugitive emissions?
 - *Answer* – A. Stewart said that there is no exemption from reporting.
 - *Question* – Should NR 438 include emissions from laboratories, even though they are exempt from the requirements of the rule and are exempt from the standards for HAPs?
 - *Answer* – A. Stewart said that they are not exempt from reporting emissions for NR 438 purposes (although if they emit less than certain thresholds, they would not be required to report anyway).
 - *Question* – A. Stewart presented a proposed placeholder for definition of sensitive individual and asked stakeholders whether a definition of a sensitive individual was needed.
 - *Question* – B. Fassbender asked whether non-manufacturing firms, banks, and any other company that has little or no emissions lose the benefit if being screened out because they are in a location where there are sensitive populations nearby.
 - *Answer* – C. Garber said that she was thinking that companies affected by this might be responsible for evaluating their emissions of a subset of HAPs, perhaps a larger list of chemicals other than the list of 27 that was handed out earlier.
 - *Question* – Someone asked about trade secret protections and how the proposal affects those sources.
 - *Answer* – A. Stewart said that emissions are not trade secret, but certain aspects of process information that go into the calculations might be.
 - *Question* – C. Terrell asked whether the 36 months time allowed for source to come into compliance was standard language.
 - *Answer* – A. Stewart stated that in the current NR 445, a source has 24 months to install control equipment after the Department approves a compliance plan. and is considered to be a reasonable time frame for compliance purposes. The Federal MACT standards allow a source 36 months to comply with the rule.
 - *Question* – Someone asked if a new or modified source would be given 36 months to comply if the source would have to meet the NR 445 standards upon startup.
 - *Answer* – the new or modified source must meet the standard upon startup (after the effective date of the rule).
 - *Question* – Does an existing source have to begin keeping records to demonstrate compliance, starting upon the effective date of the rule, or can it wait until 36 months to start keeping records.
 - *Answer* – the source must show the demonstration at 36 months and must keep the necessary records to show that it is in compliance beginning 36 months after the effective date of the rule (unless compliance extensions are in effect).
 - *Question* – Someone asked when compliance plans for BACT or LAER must be submitted.

- *Answer* – A. Stewart said this is an issue the TAG had discussed in earlier meetings. The current proposal would require an existing source to meet BACT or LAER 36 months after the effective date of a rule revision. Language under the Compliance Extension section (see NR 445.06(3)(c) in draft version 3) sets out a requirement for a source to submit information on how they intent to meet BACT or LAER under a yet to be developed schedule. The intent of this schedule would be to have the source submit the information along a timeframe that allows the department time to review and approve in enough time for the source to meet the 36 month deadline. An example was provided to help illustrate how the schedule might work. In the example, the source submits BACT/LAER 18 months prior to final deadline, department approves 6 months after submittal, leaving the source 12 months to implement BACT/LAER in time to meet the final deadline. Comments are being requested on how an appropriate schedule might be structured..
- *Question* – When is certification necessary?
- *Answer* – A. Stewart stated that certification is necessary when a source has to take some action to come into compliance with a standard. For situations where a source needs to raise a stack or replace a chemical, they just need to document what they did and they are done. To take a restriction in hours of operation, process thruput, or install control equipment, these certifications need to later be put into an enforceable document, such as a permit or consent order. In general, certification is used so that permit modifications and permit reopening is not necessary due only to the changes in NR 445. However, if the permittee wishes to reopen the permit, they can do so.
- *Question* – What if it will be 6 years before a permit is opened up again. Does one certify in this case.
- *Answer* – A. Stewart stated that if a permit was a number of years away and the permittee did not want to reopen the permit, then the certification process could be used in the interim.
- *Question* – Some people at the meeting asked if they could send their comments in later than Dec. 17th.
- *Answer* – After some discussion, it was decided that comments can be sent in by the end of business on Dec. 21st (but if at all possible, please try to send your comments in sooner).
- *Comment* – P. Stevens said that he might have some ideas for clarifying language for the spills section (NR 445.11)
- *Question* – P. White asked if the NR 445 requirements in a permit would be enforced on a “state only” basis, or be federally enforceable as well.
- *Answer* – A. Stewart and C. Garber stated that the intent of the Department is to have NR 445 requirements be “state only”, but currently there are some legal issues to work out in this regard.

VIII. Other Business/Next Steps/Next Meeting

- Comments on Draft # 3 of the proposed NR 445 are due by close of business, December 21, 2001.
- Stakeholders should consider possible options for addressing how to define locations of concern and send those to staff as well
- Stakeholders should also consider how to improve the language for use of Environmental Management Systems and how to identify the diesel sources of concern (and more precisely define the engines and fuels that the rule applies to). DNR staff will also be working on these issues before the next meeting.

The next TAG meeting is scheduled for Monday, January 7, 2001 in the same time (9:30 am – 3:30 p.m.) and room as the Dec. 3rd meeting (Rm. 027 GEF 2 Bldg. In Madison – the DNR offices). There is a chance the date could be moved to a later date. A February meeting is scheduled for Monday, February 4th, 2002 from 9:30 am – 3:30 p.m. in Rm. 027 of the GEF 2 Building.